

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD TRAVERSO,

No. C07-03629 MJJ

Plaintiff,

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RELIEF FROM CASE  
MANAGEMENT SCHEDULE**

v.

CLEAR CHANNEL OUTDOOR INC,

Defendant.

**INTRODUCTION**

Before the Court is Plaintiff Richard Traverso's ("Plaintiff") Motion for Relief from Case Management Schedule. (Docket No. 11.) Defendant Clear Channel Outdoor Inc. ("Defendant") opposes this Motion. For the following reasons, the Court **DENIES** Plaintiff's Motion.

**FACTUAL BACKGROUND**

The issue in this unlawful detainer action is whether Defendant has rental rights to a billboard space it rented from Plaintiff. Plaintiff's material allegations are as follows.

The lease between the parties, first entered into in 1984, includes an automatic five-year term extension provision, provided that neither party gave notice of termination 60 days prior to the end of the lease. (Plaintiff's Complaint, "Complaint" at 2.) The lease, if not automatically extended, would have ended on February 28, 2007. (Complaint at 2.) Plaintiff alleges that he sent Defendant timely notice to terminate the lease on February 28, 2007. (Complaint at 2.) Plaintiff further contends that Defendant did not vacate the premises on February 28, 2007. (Complaint at 2.)

1 Plaintiff filed an unlawful detainer action in state court on June 14, 2007 as an unlimited civil  
2 case. (Complaint at 1.) Plaintiff, inter alia, demanded possession from Defendant after the  
3 expiration of a fixed-term lease. (*Id.* at 3.) Defendant removed the action to federal court on July  
4 13, 2007 on the basis of diversity jurisdiction. (Def.'s Notice of Removal at 1.)

5 On October 12, 2007, the Court denied Defendant's Motion to Dismiss. Plaintiff now moves  
6 the Court to apply California procedural law governing unlawful detainer actions under Civil Local  
7 Rule 16-2(d).

### 8 LEGAL STANDARD

9 A federal court sitting in diversity jurisdiction applies the Federal Rules of Civil Procedure  
10 when the scope of the rule is "sufficiently broad to cover the situation" so long as the rule is  
11 constitutional and a valid exercise of the Supreme Court's rule-making power under the federal  
12 Rules Enabling Act. *See Hanna v. Plummer*, 380 U.S. 460, 471 (1965). *See also Walker v. Armco*  
13 *Steel Corp.*, 446 U.S. 740, 750 n.9 (1980). The lower courts have the authority to adopt consistent  
14 local rules governing procedure. *See* 28 U.S.C. § 2071.

15 In the Northern District of California, Civil Local Rule 16-2(d) provides that a party may, by  
16 motion, seek relief from an obligation imposed by the Federal Rules of Civil Procedure 16 or 26 or  
17 the Order Setting Initial Case Management Conference. The motion must: (1) describe the  
18 circumstances which support the request, (2) confirm that counsel has met and conferred in an effort  
19 to reach agreement on the matter, (3) be accompanied by a proposed revised case management  
20 schedule, and (4) if applicable, indicate any changes required in the ADR process or schedule in the  
21 case. *See* CIV. L. R. 16-2(d).

### 22 ANALYSIS

23 Plaintiff contends that the Court should apply California procedural law for unlawful detainer  
24 actions rather than the Federal Rules of Civil Procedure and the Court's Civil Local Rules. (*See*  
25 Plf.'s Proposed Order, Docket No. 14.) Specifically, Plaintiff argues that the Court should adopt the  
26 unlawful detainer provisions that provide for filing an answer within five days of service of an  
27 unlawful detainer complaint, shortened discovery deadlines, shortened briefing and hearing  
28 timelines for summary judgment motions, and giving trial preference for unlawful detainer actions

1 over nearly all other categories of civil actions. (*See* Plf.'s Mem. of P. & A. at 4-5.) Defendant  
2 opposes this Motion, asserting that the Court should apply federal procedural law in this case.  
3 (Def.'s Opp., Exh. A.)

4 Plaintiff concedes that the unlawful detainer rules he requests this Court to apply are in  
5 conflict with the Federal Rules of Civil Procedure. (Plf.'s Mem. of P. & A. at 2.) Plaintiff asserts,  
6 however, that the California unlawful detainer statutes provide for expedited adjudication of  
7 unlawful detainer actions and do not have a counterpart in the Federal Rules. (*Id.*) Plaintiff also  
8 contends that federal courts have, in the past, applied California procedural law to unlawful detainer  
9 actions. (*Id.*)

10 The Court finds Plaintiffs arguments unavailing. While the Federal Rules of Civil Procedure  
11 and the Civil Local Rules do not provide for expedited unlawful detainer procedures, they establish,  
12 inter alia, the procedure and timelines for the filing of complaints and answers, discovery, summary  
13 judgment, and trial. *See, e.g.*, Civ. L. R. 3, 7, 16, 26, 30, 33, 34, 36, 37, 40, 56; FED. R. CIV. P. 3, 5,  
14 6, 7, 16, 26, 30, 33, 34, 36, 37, 40, 56. The federal rules are therefore in direct conflict with the  
15 unlawful detainer procedures that Plaintiff requests this Court to apply.

16 In addition, the cases cited by Plaintiff do not support the proposition that federal courts have  
17 applied the California unlawful detainer procedures at issue in this Motion. Instead, the case law  
18 illustrates that courts have applied the substantive elements of the unlawful detainer action contained  
19 in California Code of Civil Procedure § 1161. *See, e.g., Silberblatt, Inc. v. United States Postal*  
20 *Service*, No. 98-16570, 98-16572, 2000 WL 61295, at \*3 (9th Cir. Jan. 21, 2000) (approving, in an  
21 unlawful detainer action involving the Postal Service, the district court's application of federal law  
22 to the procedure and California law to the merits); *United States v. Hilliard*, No. C94-3067, 1995  
23 WL 225669, at \*1 (N.D.Cal. Mar. 8, 1995) (finding, inter alia, that the plaintiff established every  
24 essential element of its unlawful detainer claim under Cal. Code of Civ. Pro. § 1161). Federal courts  
25 have also applied the notice requirements contained in California unlawful detainer statutes. *See*  
26 *United States v. Wilson*, 881 F.2d 596, 600 (9th Cir. 1989) (approving the district court's application  
27 of the elements of an unlawful detainer claim, including the notice requirements, pursuant to Cal.  
28 Code of Civ. Pro. § 1161); *Gallman v. Pierce*, 639 F.Supp. 472, 478 (N.D.Cal. 1986) (finding that


1 the termination proceedings under Section 8's existing housing program are left by Congress and  
2 HUD to state law and thus applying the California unlawful detainer provisions, including the notice  
3 requirements). The cases do not, however, support Plaintiff's contention that this Court should  
4 apply California's unlawful detainer procedures for, inter alia, pleadings, discovery, summary  
5 judgment and trial. Instead, the reasoning set forth in these cases affirmatively supports a finding  
6 that this Court should, in the present case, apply federal procedural law and California substantive  
7 law. Accordingly, having reviewed the record and the relevant case law, the Court denies Plaintiff's  
8 request.

### 9 CONCLUSION

10 For the foregoing reasons, the Court **DENIES** Plaintiff's Motion for Relief from Case  
11 Management Schedule and **VACATES** the October 30, 2007 hearing in this matter.

12  
13 **IT IS SO ORDERED.**

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15 Dated: October 24, 2007

16   
17 MARTIN J. JENKINS  
18 UNITED STATES DISTRICT JUDGE  
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